

Tape Replacement Standard Terms and Conditions for the Sale of Goods

1. Definitions

- 1.1 In these Conditions:
"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
"Goods" means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and any goods supplied in substitution for or in replacement of or in addition to such goods. "Seller" means Tape Replacement Limited (registered in New Zealand under number 2352010).
"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
"Contract" means the contract for the purchase and sale of the Goods.
"Writing" includes letter, cable, facsimile transmission, email and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

3. Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of any cancellation. However, from the date of the order, a 14 day cooling off period will be allowed during which cancellations or reducing the order will be accepted by the seller without penalty. Without prejudice to the generality of the foregoing, should the Buyer purport without the agreement in Writing of the Seller to cancel any order which has been accepted by the Seller or refuse to accept delivery of any of the Goods such action shall constitute a breach of the agreement and, at the option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the order so purported to be cancelled or 50% of the invoice value of the Goods delivery of which is so refused (as the case may be). In the event of the Seller so requiring the Buyer shall pay such

amount to the Seller (without any deduction) within 7 days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such breach of agreement on the part of the Buyer. For the avoidance of doubt, in the event that the Seller opts to require the Buyer to pay liquidated damages as set out above, and the Buyer duly pays such liquidated damages, neither party shall have any further liability to the other in relation to the Goods in respect of which such liquidated damages are paid.

4. Price of the goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from New Zealand, the Seller's published export price list relating to the country of destination shall apply. All prices quoted are valid for 30 days only or such lesser period as shall be stated by the Seller on the face of the relevant quotation or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of freight and handling charges.
- 4.4 The price is exclusive of any applicable goods services tax that the Buyer shall be additionally liable to pay to the Seller.

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods. Standard terms being 50% deposit prior to shipping and 50% balance on delivery and acceptance by the Buyer.
- 5.2 All Invoices are payable net by electronic bank transfer. The Buyer shall pay all invoices without any other deductions notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. The time of payment

of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - (a) cancel the contract or suspend any further deliveries to the Buyer;
 - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per month, compounding, until payment in full is made.
- 5.4 In the event that the Seller shall cancel the contract under the provisions of Clause 5.3 (a) above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

6. Delivery

- 6.1 Delivery of the Goods shall be made by courier to the Buyer's premises at any time after the Seller has notified the Buyer that the Goods are ready for shipping or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The Seller shall be entitled to make part delivery of the Goods at any time.
- 6.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods for any reason, other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the cost to the Buyer of the Goods not delivered.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without

prejudice to any other right or remedy available to the Seller, the Buyer will be responsible for all additional charges caused thereby.

7. Ownership and risk

- 7.1 The property in the Goods shall not pass to the Buyer until the Seller has received in cleared funds payment in full of the price of the Goods and payment in full of all sums due from the Buyer to the Seller whether under the Contract or by virtue of any other liability of the Buyer to the Seller.
- 7.2 Until such time as the Seller has received full payment, the Seller may register a financing statement pursuant to the provisions of the *Personal Property Securities Act 1999* to secure payment in relation to the Goods
- 7.3 The Seller will take reasonable precautions to preserve the Goods pending delivery to the Customer. Notwithstanding this, the risk in the Goods passes to the Customer from the time the Goods leave the Seller's premises (ex works).
- 7.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property and free from any charge, lien, or other encumbrance or 'security interest'. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for such part of the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, as is equivalent to the invoice value of the Goods and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured
- 7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.6 For the avoidance of doubt, nothing contained in this Clause 7 shall entitle the Buyer to return any of the Goods to the Seller save as expressly provided in these terms and conditions or as expressly agreed in writing between the Seller and the Buyer.

8. Ownership of intellectual property

- 8.1 Any copyright or other intellectual property rights associated with the Goods, software or documentation prepared by the Seller, shall be and remain the absolute property of the Seller.

9. Warranties and exclusion of liability

- 9.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade, will be free from defects in material and workmanship at the time of delivery, and free from all liens and encumbrances.
- 9.2 The Buyer acknowledges that the Goods are being supplied for business purposes and as such the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are excluded.
- 9.3 The Seller warrants that the Goods will be under manufacturer's warranty for 1 year from the shipment date.
- 9.4 The above warranty is given by the Seller subject to the following conditions:
 - (a) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer:
 - (b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alternation or repair of the Goods without the Seller's approval.
 - (c) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or (refund to the Buyer the price of the Goods) (or a proportionate part of the price), plus any transportation charges actually paid by the Buyer, but the Seller shall have no further liability to the Buyer.
- 9.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any claims for death, personal injury, damage to property or consequential loss or damage (whether for loss of profit or otherwise) costs, expenses

or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

- 9.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- (a) Act of God, explosion, flood, tempest, earthquake, fire or accident;
 - (b) war or threat of war, sabotage, insurrection, civil disturbance, or requisition;
 - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - (d) import or export regulations or embargoes;
 - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - (f) difficulties in obtaining raw materials labour, fuel, parts or machinery;
 - (g) power failure or breakdown in machinery.

10. Health and safety

- 10.1 The Buyer shall be responsible to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and the health and safety of the Buyer's staff.

11. Maintenance

- 11.1 The Seller and the Buyer may enter into a separate support and maintenance agreement commencing at the expiration of any warranty under these Conditions for an additional maintenance fee on terms and conditions set out in the Contract and/or as set out in a separate written support and maintenance agreement entered into by the Seller and the Buyer.

12. Insolvency of buyer

- 12.1 This clause applies if:
- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - (c) the Buyer ceases, or threatens to cease, to carry on business; or
 - (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 12.2 If this clause applies, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. Export terms

- 13.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 13.2 Where the Goods are supplied for export from New Zealand, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply, notwithstanding any other provisions of these conditions.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to the Seller the requirements of any such legislation or regulations requiring action on the part of the Seller and for the payment of any duties or taxes in connection with the Goods.
- 13.4 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered EXW from the air or sea port of shipment.
- 13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods on delivery. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of damage during transit.
- 13.6 Payment of all amounts due to the Seller shall be made in such manner as shall be agreed between the Seller and the Buyer in Writing.

14. Credit

- 14.1 The Buyer authorises the Seller to carry out any credit checks on the Buyer with third parties

15. Mediation and arbitration

- 15.1 If any dispute relating to this Agreement between the Seller and the Buyer is not resolved through informal discussion within 14 days from the date a dispute arises, the parties agree to submit the issue first before a non-binding mediator and to an arbitrator

in the event that mediation fails. The decision of the arbitrator will be binding on the parties. Any mediator or arbitrator must be a neutral party acceptable to both the Seller and the Buyer. The cost of any mediations or arbitrations will be paid by the Buyer.

16. General

- 16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party given the notice
- 16.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 16.4 The contract shall be governed by and will be construed in accordance with the laws of New Zealand. Any dispute will be determined by the exclusive jurisdiction of the New Zealand Courts

